



For immediate release

12 June 2013

Vulture feet case highlights injustice to former homeland residents

Being in possession of vulture feet in the former Transkei led to the conviction of a traditional healer, and this has sparked a Constitutional debate, with Legal Aid South Africa calling for the rationalisation of older order legislation in former homelands, to be prioritised.

'Old order legislation' means legislation of the former homelands before the new Constitution took effect and which are not necessarily in line with the rest of the country and could infringe on the Constitutional rights to equality for residents of those areas.

A recent case handled by Legal Aid SA, in which a traditional healer was convicted for unlawful possession (under the former Transkei laws), for being found with vulture feet that she was to put in traditional medicine, put under the spotlight on the unfair prejudice of these older order legislation. The accused, who hails from Tsolo, in rural Eastern Cape is a widowed mother of six children, who also depends on social grants to sustain her family.

Appearing in a criminal appeal on behalf of the accused, Legal Aid SA Senior Litigator, Lilla Crouse argued that in addition, the Court should declare the provisions still applicable to the former Transkei area, to be unconstitutional and refer this finding to the Constitutional Court.

During the trial in the Tsolo Magistrate's Court, the widow's defence was that, despite having attended a reputable school of traditional healing, she was unaware that it was illegal to possess the vulture feet. The Magistrate convicted her on the basis that in the former Transkei, there is legislation that creates a strict liability. In other words, it is not a defence that an accused person is unaware of the illegality of the possession.

"This would have been a defence in the rest of South Africa, hence it was argued before the Magistrate that the erstwhile Transkei legislation infringes on the constitutional right to a fair trial and the right to equality," explains Advocate Crouse.

As a result of this, Legal Aid SA applied for and obtained Leave to Appeal against the conviction.

On 7 June 2013, Advocate Crouse argued the criminal appeal on behalf of the accused in the Mthatha High Court.

According to a Notice filed, the accused sought an order that sections 13(c) and 84(13) of Decree 9 of 1992 (Tk) (environmental conservation) are constitutionally invalid as they infringe on the appellant's constitutional right to equality and/or to a fair trial.

During argument both counsel for the State and the Eastern Cape MEC for Economic Development, Tourism and Environmental Affairs, Mcebisi Jonas, agreed that the conviction of the accused should be set aside, as it was not proven that she was aware that she acted illegally in possessing the vulture feet.

Advocate Crouse argued that in addition, the Court should declare the provisions still applicable to the former Transkei area, to be unconstitutional and refer this finding to the Constitutional Court. Advocate Gerald Bloem SC of Grahamstown Bar, indicated that the state was busy with a process of rationalisation of older order legislation and would soon enact new legislation.

"The fact that rationalisation had not taken place 18 years after our new constitutional dispensation amounted to a failing of parliament in its constitutional duty, as there is still discrimination between the former Transkei area residents and people residing in the rest of South Africa," said Advocate Crouse.

There was a lighter moment in court, which drove home the grave injustice suffered by residents of the former Transkei, when one of the Judges hearing the matter asked whether the current Act meant that if he became hungry while driving in a rural area, and stopped at a road side vendor to buy chicken feet (but instead got sold vulture feet without his knowledge), he could be convicted under the current legislation?

After hearing argument, Judges Griffiths and Mjali indicated that they would take time to consider their judgment, and asked for an affidavit would be placed before the court on the progress of the rationalization of laws.

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Issued by the Communications Department of Legal Aid South Africa

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